



**Gonzales v. Thomas (05-552),
Carey v. Musladin (05-785),
United States v. Resendiz-
Ponce (05-998), and BP
American Production Co. v.
Watson (05-669)**

Greetings, Court Fans!

The Court returned today from a two-week layoff for the final argument session of the Term, which runs through the 26th. There were no opinions in argued cases today.

The Court, however, did issue a per curiam opinion in ***Gonzales v. Thomas (05-552)***, in which it unanimously held that federal immigration officials, not a court of appeals, should get first crack at determining whether fear of persecution due to family ties can justify an asylum claim. Thomas and her family are white South Africans who sought asylum in the United States based on fear of persecution because of their race, political beliefs, and “membership in a particular social group.” Thomas claimed her family fit this last category because they were all “relatives of Boss Ronnie,” Thomas’s father-in-law, who allegedly mistreated black employees at his company. An immigration judge and the Board of Immigration Appeals rejected their asylum claim but focused only on their racial and political concerns. The Ninth Circuit, sitting *en banc*, reversed, unanimously holding that family ties *might* constitute “membership in a particular social group” and, over the dissent of four judges, holding that kinship ties to Boss Ronnie *did* satisfy this criterion. The dissenters argued that this factual determination should have gone to the relevant agency, the INS, first. The Court agreed and summarily reversed the Ninth Circuit’s “obvious error.” In so doing, it reaffirmed the “ordinary remand” rule that the role of courts in immigration cases is one of “review, not first view.” So now the case goes back for INS to take a look at Boss Ronnie’s family.

The Court also granted cert in three cases today, two of which concern interesting criminal matters and one that, well, doesn't. You'll have no problem picking that one out of the list below:

Carey v. Musladin (05-785): In the absence of controlling Supreme Court law, did the Court of Appeals for the Ninth Circuit exceed its authority under 28 U.S.C. § 2254(d)(1) by overturning respondent's state conviction of murder on the ground that the courtroom spectators included three family members of the victim who wore buttons depicting the deceased?

United States v. Resendiz-Ponce (05-998): Whether the omission of an element of a criminal offense from a federal indictment can constitute harmless error.

BP American Production Co. v. Watson (05-669): In this case under the Mineral Leasing Act, the Court will consider "[w]hether – contrary to the decision below but consistent with decisions of the Tenth and Federal Circuits – the limitations period in 28 U.S.C. § 2415(a) applies to federal agency orders requiring the payment of money claimed under a lease or other agreement."

Finally, the Court asked the SG to weigh in on the cert petitions in ***Powerex Corp. v. Reliant Energy Services (05-85)*** and ***Powerex Corp. v. California ex rel. Lockyer (05-584)***, which raise the following questions under the Foreign Sovereign Immunities Act: (1) Whether an entity that is wholly and beneficially owned by a foreign state's instrumentality, and whose sole purpose is to perform international treaty and trade agreement obligations for the benefit of the foreign state's citizens, may nonetheless be denied status as an "organ of a foreign state" under the [FSIA], based on an analysis of sovereignty that ignores the circumstances surrounding the entity's creation, conduct, and operations on behalf of its government. (2) Whether an entity is an "organ of a foreign state" under the FSIA when its shares are completely owned by a governmental corporation that, by statute, performs all of its acts as the agent of the foreign sovereign.

That's all for today. Thanks for reading!

Ken & Kim

From the [Appellate Practice Group](#) at Wiggin and Dana. For more information, contact [Kim Rinehart](#), Ken Heath, [Aaron Bayer](#), or [Jeff Babbin](#) at 203-498-4400.